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California Holds That Internet Service Providers, Such As Yelp, Can Disobey Orders To Remove Defamatory Posts - So How Can Companies Remove False Reviews From The Internet?

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It goes without saying that online reviews are important to companies. For consumers under 55, nearly 60% report that they “always” use online reviews to inform purchasing decisions, and another 34% report that they “sometimes” do.¹ With so many consumers looking online to evaluate your company, a false negative review can have a dramatic impact on whether customers choose to buy from your company. This puts significant responsibility on internet service providers (“ISPs”) that host online reviews to ensure that users do not post false content. But if the ISPs aren’t required to remove false reviews, what can a company do to protect its online reputation?

That scenario recently arose in a California case involving a law firm and defamatory reviews posted by a former client. The California Supreme Court ruled that even though the posts were defamatory, an order directing Yelp to remove the reviews violated the Communications Decency Act. At first, the opinion seemed to be an outlier, destined to be overruled. Indeed, how can courts redress the harm caused by defamatory posts online if they can’t order the ISP to remove the defamatory material? But the U.S. Supreme Court denied review of the California Supreme Court’s decision. Thus, for the time being, Yelp and other websites like it are immune in California from orders requiring that they remove defamatory content. So what now?

Why Can’t You Just Sue Yelp?

The Communications Decency Act (47 U.S.C. § 230) prohibits a party from filing a lawsuit against an ISP, such as Yelp, based on the content posted by its users, such as a false review. In fact, the Act expressly states that “no liability may be imposed under any State or local law” against an ISP as a publisher or speaker of online comments posted by its users. The Act’s purpose in shielding ISPs from liability is to promote the continued development of the internet and encourage ISPs to develop technologies to block and filter content without fear from liability. Indeed, if ISPs were liable for each alleged false post, the internet would be significantly different from its current form.

Due to the Act, lawsuits for libelous comments posted online do not typically name as a defendant the website that hosts the comments. Instead, the user—anonymous or known—is named in the lawsuit and the relief sought includes an order requiring the content be removed. While the order would require the defendant to voluntarily remove the content, the order also would likely require the website to remove the content in order to be effective. Many websites that host frequent comments from users even state in their terms of service that they will voluntarily comply with orders requiring defamatory content be removed.



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Does a Removal Order Make Yelp “Liable” As a Speaker?

In *Hassell v. Bird*, the California Supreme Court ruled that an order directing Yelp to remove a defamatory review violated the Act because it imposed liability on Yelp as the speaker. According to the Court, because Yelp would have had immunity if it were named as a defendant in the underlying case, an order requiring Yelp to remove comments was treated as a nefarious “end-around” to hold Yelp liable. In doing so, the court held that *even if the content is found to be defamatory*, the ISP is immune from a removal order so long as its conduct “goes no further than the mere act of publication—including a refusal to depublish upon demand.”

Hassel seems to be incompatible with the Internet itself, as it overlooked that ordering Yelp to remove the defamatory reviews was necessary to remedy the damage online posts cause. Each day the reviews remain online—now four years since this action began—they potentially influence the millions of monthly Yelp users. Further, a removal order doesn’t force Yelp to incur attorneys’ fees or costs to defend against a lawsuit, nor does it open Yelp up to potential damages.

An increasing number of torts are committed in an online environment, from revenge porn to defamation and tortious interference. By allowing ISPs to disobey orders to remove harmful comments, the primary form of relief sought in these cases—removing content from the internet—is potentially unavailable. Now, the relief must focus on the user that posted the comments and compelling them to voluntarily remove them.

What Can a Business Do to Protect its Reputation?

Although the U.S. Supreme Court denied review of the *Hassel* opinion, it is still a minority interpretation of the Act and companies seeking to protect their reputation can still seek orders requiring the removal of tortious online content, so long as they do so in a state other than California. However, companies evaluating whether to bring an action based on a tortious online comment must consider the likelihood that the ISP itself will contest the relief sought and be prepared to argue against them.

The *Hassel* opinion also highlights the importance of a multi-faceted approach to redressing harm caused by tortious online comments. Lawsuits are not always the most effective solution and the attorneys at Ryley Carlock & Applewhite consult with clients on a range of options, including direct communication with the ISPs based on their terms of service. Our goal is to get the posts removed efficiently and cost effectively for our clients.

References:

¹ Better Business Bureau, February 14, 2019. “[BBB Trust Sentiment Index: 2017 Report.](#)”

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